MONTANA LEGISLATIVE HISTORY

Chapter 270 1995

Bill H 461 S _____ Original bill & history ✓ C

H. Committee on HS & Aging			S. Committee on Nat. Res.		
Hearing Date(s)	2/13	C	Hearing Date(s)	3/08	C
	2/16	C		3/08	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 461 INTRODUCED BY RYAN, ET AL.

CREATE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO HUMAN SERVICES & AGING		
2/08	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	93	6
2/21	3RD READING PASSED	90	10
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/08	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/17	2ND READING CONCURRED	46	0
3/18	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE		
3/20	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 270		
	EFFECTIVE DATE: 03/28/95		

HB 462 INTRODUCED BY EWER, ET AL.

REVISE CERTAIN WORKERS' COMPENSATION LAWS AND DEFINE "VOLUNTEER"

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO BUSINESS & LABOR		
2/08	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	91	7
2/18	3RD READING PASSED	90	8
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/02	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/09	2ND READING CONCURRED	39	8
3/10	3RD READING CONCURRED	34	11
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	92	4
4/05	3RD READING AMENDMENTS CONCURRED	89	8
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 424		
	EFFECTIVE DATE: 04/13/95—SECTIONS 1, 2 & 4-6		
	EFFECTIVE DATE: 07/01/97—SECTION 3		

House BILL NO. 461

INTRODUCED BY Rep Ryan Hagen / Burnett Peck ORR
Selvig Keenan Swanson MERCER M. Hanson B. & Brown Jacobson

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." GRINDE Foster Stang Dexter Page

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Response to Hazardous Material Incidents Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 14] to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other state agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when a emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence

by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(9) "Local emergency response authority" means the person or persons designated by the city, county, or commission to be responsible for the management of an incident at the local level.

(10) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(11) "Plan" means the Montana incident management and hazardous material response support plan.

(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(13) "State hazardous material incident response team" means persons who are designated as state

employees by the commission while they are engaged in activities as provided for in [section 4] and may include members of the commission and local and state government responders.

(14) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

NEW SECTION. **Section 4. State emergency response commission.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission must consist of 20 members appointed by the governor. The commission must include representatives of the national guard, air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from the department of health and environmental sciences, the division, the department of transportation, the department of administration, the department of justice, the department of fish, wildlife, and parks, and the office of the governor, and any other representatives that the governor appoints. The members shall serve without compensation. The governor shall appoint a presiding officer from the appointees.

(2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local

emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in [sections 1 through 14].

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with [sections 1 through 14]. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under [sections 1 through 14].

NEW SECTION. **Section 5. Commission budget and expenditures.** (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

NEW SECTION. **Section 6. Local emergency response authorities -- designation.** (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of [sections 1 through 14].

NEW SECTION. **Section 7. Local emergency response authorities -- powers and duties.** (1) Every local emergency response authority designated pursuant to [sections 1 through 14] shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management structure and specifically define the agency that will provide incident command.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

NEW SECTION. **Section 8. Controlling provisions for state of emergency -- liability of responsible persons.** In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

NEW SECTION. **Section 9. Notification of release.** (1) A person responsible for reporting a release

under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of health and environmental sciences of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed $10,000 for each day the violation continues to a maximum of $100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

NEW SECTION. **Section 10. Right to reimbursement.** (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in [sections 1 through 14] and only if adequate funds are available.

NEW SECTION. **Section 11. Deficiency warrants for reimbursement of response costs.** (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as

to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to [sections 1 through 14].

(b) The costs of routine firefighting procedures are not reimbursable costs under [sections 1 through 14].

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

NEW SECTION. **Section 12. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in [sections 1 through 14] is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission and the state hazardous material incident response team, [sections 1 through 14] do not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the

responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to [sections 1 through 14].

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

NEW SECTION. **Section 13. Liability of persons and response team members rendering assistance.** The commission and the state hazardous material incident response team are not liable under [sections 1 through 14] for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the state hazardous material incident response team when the person is contacted for response regardless of the person's location.

NEW SECTION. **Section 14. Required assistance in hazardous material incident.** An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

Section 15. Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, ~~no~~ allocation will not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; ~~and~~

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

~~(d)~~(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 14].

NEW SECTION. **Section 17. Two-thirds vote required.** Because [section 14] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0461, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill creating the Montana Emergency Response to Hazardous Material Incidents Act.

ASSUMPTIONS:
Department of Military Affairs:

1. The Department of Military Affairs, through the Disaster and Emergency Services Division (DES), currently provides limited planning, training, and administrative support to the State Emergency Response Commission (SERC) and this will continue within the present law base.
2. Federal funding will continue to be granted to the SERC and DES to support hazardous materials planning and training.
3. Complete implementation of this act will not take place until the completion of the Montana Incident Management and Hazardous Material Response Support Plan (MIMHMRSP).
4. The DES does not expect a fiscal impact during the 1997 biennium; however, the MIMHMRSP may identify future needs. Section 5 of the bill allows the SERC to submit its budget to DES; it is assumed that the commission's budget request will be included in the DES program budget in the Governor's Executive Budget in future biennia. The estimated future amounts and funding source(s) are not subject to reasonable estimate.
5. Statutory appropriation authority will be available for hazardous material incident response expenditures from the environmental contingency account controlled by the Governor. The biennial expense amounts are not subject to reasonable estimate.

Department of Health and Environmental Sciences (DHES):

6. The DHES has existing legal authorities and responsibilities controlling waste disposal, providing protection of state waters, and providing for clean-up and/or remediation orders that are not altered by this bill.
7. The DHES role in the State Emergency Response Commission (SERC) would not be significantly affected by the provisions of this bill. The SERC would be the administrative and legal responsibility of the Disaster and Emergency Services Division of the Department of Military Affairs.
8. Although roles and responsibilities of state agencies are clarified in this bill, the role of DHES in emergency response would not be significantly altered by this bill.
9. The bill has no fiscal impact on the DHES.

FISCAL IMPACT:
There is no fiscal impact during the 1997 biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Local government responders to emergency incidents would have clear authority to seek cost recovery for expenditures incurred in their emergency response actions.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The bill would provide an adequate statewide hazardous material response system that would decrease the threat to the public, responders, the environment, and property. The bill will clearly assign fiscal responsibility for response to spills of hazardous materials or other types of hazardous material incidents to the responsible parties. State and local government responders will have a clear authority and procedure to seek recovery of their emergency response costs and the overall incident costs may decrease.

Dave Lewis 2-13-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

WILLIAM M. RYAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0461, as introduced

HB 461

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 13, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Loren L. Soft (R)

Members Excused:

Rep. John C. Bohlinger, Vice Chairman (R)
Rep. Kenneth Wennemar (D)

Members Absent: None

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 468, HB 481, HB 340, HB 461, HB 484	
Executive Action:	HB 340	DO PASS AS AMENDED
	HB 484	DO PASS AS AMENDED
	HB 385	ACTION POSTPONED
	HB 461	DO PASS AS AMENDED
	HB 481	TABLED
	HB 407	RECONSIDERED/DO PASS

{Tape: 1; Side: A; Approx. Counter: 000; Comments: This meeting was recorded on six 60-minute cassette tapes.}

Discussion:

REP. KOTTEL explained that her amendment would change the wording in appropriate places in the bill from "the child" to "a child" to prevent a person convicted of sexual assault from adopting any child.

Vote: Voice vote was taken. The motion carried unanimously.

Motion/Vote: REP. CHRIS AHNER MOVED THAT HB 340 DO PASS AS AMENDED. The motion carried unanimously.

{Tape: 4; Side: A; Approx. Counter: 100; Comments: NA.}

HEARING ON HB 461

Opening Statement by Sponsor:

REP. BILL RYAN, HD 44, Great Falls, stated that two years ago the governor appointed a commission to look at emergency hazardous materials management. The purpose is to aid or supplement local response teams when they come across a potential hazardous materials spill. He walked the committee through the book that was handed out describing the plan. **EXHIBIT 14**

Proponents' Testimony:

Clark Johnson, MSU Fire Service Training School, State Emergency Response Commission (SERC), mentioned that the SERC wanted to help local volunteer responders by giving them someone to call to ask when they have a problem and when there is something they can not handle they need a high-tech person to take care of it until the remediation contractors can get in. It was mandated to utilize existing coordinating activities.

James Lofftus, President of the Montana Fire District Association, supported the bill.

Bob Robinson, Director of the Department of Health and Environmental Sciences (DHES), co-chairman of SERC, stated that the plan does not cost extra money but utilizes all the public and private resources available. **EXHIBIT 15**

Richard Grady, Fire Chief, Canyon Creek Fire District, described the amendment he offered on page five line 21 to keep in common terminology with the standards set by the National Fire Academy and other fire organizations.

Kathy McGowan, Montana Sheriffs and Police Officers Association, strongly endorsed the product of the process which is HB 461.

Bruce Suenram, State Fire Marshall, Department of Justice, supported the bill.

Dan Lieberg, administrative officer, Montana Disaster and Emergency Service, supported the bill.

Dave Herzberg, Missoula Rural Fire District, supported the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. LIZ SMITH asked if **Mr. Suenram** was a resource for local fire departments. He replied that his office is primarily in the fire prevention business and is involved in the inspections of facilities.

REP. L. SMITH stated that the Search and Rescue in Deer Lodge is the coordinator for the hazardous waste and asked if they were involved in training also.

{Tape: 4; Side: B; Approx. Counter: 00; Comments: NA.}

Mr. Johnson replied that there are a lot of inputs from the coordinator.

REP. BRUCE SIMON relayed his concern that the response team was operating in an appropriate manner and that they were liable if they were negligent. He asked if the team would be held harmless if they violated standard operating procedures or were negligent.

David Niss, Legislative Council, replied that if they were not operating under appropriate standard operating procedures they would not fall under the definition and therefore would not be covered.

CHAIRMAN GRIMES asked who drafted the bill. **Mr. Robinson** replied that Clark Johnson spent a lot of time drafting it and the DHES, along with the Disaster and Emergency Services and governor's office, reviewed it.

CHAIRMAN GRIMES continued by inquiring if there was any other current commission that would have been able to fulfill the same duties that this commission fills and were the implications of creating the commission considered.

Mr. Robinson replied that this was the same commission that is currently in place by executive order and governor's direction.

REP. SIMON asked the sponsor if he was in favor of the amendments that were proposed. **REP. RYAN** stated that he was in favor of them.

Closing by Sponsor:

REP. RYAN said that the liability issue was like taking the good samaritan law and enlarging it up to fit the state. HB 461 is a good idea.

{Tape: 4; Side: B; Approx. Counter: 160; Comments: NA.}

HEARING ON HB 484

Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, HD 89, Floweree, said that the cost of Medicaid has skyrocketed and HEAL Montana approached him and they came up with the bill that will study how Medicaid can be changed to help the working poor and cover the private insurers.

Proponents' Testimony:

Susan Good, HEAL Montana, mentioned that welfare reform and the health care crisis (the working poor) is of great importance in the current legislature. HB 484 seeks to find the truth about the two issues. HEAL Montana is a non-profit educational organization dedicated to achieving health care reforms that will ensure high quality health care services while preserving individual freedom of choice within the free market system. When individuals spend their own money on health care, the costs go down but the individual's care does not suffer. Medical Savings Accounts (MSAs) provide for a person to pay for his own insurance premiums and other health care costs from an account whose fund accumulates tax free. The amendment that is being offered will require the Department of Social and Rehabilitation Services (SRS) to begin the waiver application process as soon as the study comes back with a positive report as to its cost effectiveness.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. LIZ SMITH asked for elaboration on how the plan might work. **Ms. Good** said that cards are issued and a private health insurance plan will be purchased with regular state and federal matched dollars and the Medicaid recipients will have an MSA set up for them. A large deductible policy will be purchased for them ($1,000 that will be placed in the MSA) and if they don't spend all that deductible, they will be able to keep half of what they saved.

{Tape: 4; Side: B; Approx. Counter: 490; Comments: NA.}

EXECUTIVE ACTION ON HB 461

Motion: **REP. KEN WENNEMAR MOVED THAT HB 461 DO PASS.**

Motion/Vote: **REP. KEN WENNEMAR MOVED TO AMEND HB 461. The motion carried unanimously.**

Motion/Vote: **REP. BRUCE MOVED THAT HB 461 DO PASS AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 481

Motion: **REP. BRAD MOLNAR MOVED THAT HB 481 DO PASS.**

Discussion:

REP. SUSAN SMITH stated that the board should put together a proposal and bring it back to the 1997 Legislative Session.

REP. LOREN SOFT agreed with the previous statement and felt if the board had adopted a significant program instead of remaining neutral there would have been a more favorable response.

REP. DICK GREEN said that more time and information was needed.

REP. MOLNAR mentioned that some nurses have the prescriptive authority without having all the education and training that others are required. The psychologists should have the chance to try.

REP. BRUCE SIMON explained that all prescriptive authorities are within certain specialties but they are all medically trained and held under supervision.

REP. LIZ SMITH stated that the committee was moving too fast in granting prescriptive authorities.

REP. ELLEN BERGMAN said that this was just like any other turf war.

REP. WENNEMAR told the committee that the psychologists' lobbyist was willing to make an amendment to section 3 in relationship to how much time and what they have to do to be granted the prescriptive authority.

REP. LOREN SOFT said that if something is submitted the amendment needs to approximate what training the advanced practice nurse receives.

CHAIRMAN GRIMES voiced his concern about being able to recognize masked symptoms.

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority			✓
Rep. Carolyn Squires, Vice Chair, Minority	✓		✓
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar			✓

HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Mr. Speaker: We, the committee on **Human Services and Aging** report that **House Bill 461** (first reading copy -- white) **do pass as amended.**

Signed: _____
Duane Grimes, Chair

And, that such amendments read:

1. Page 5, line 21.
Strike: "structure"
Insert: "system"
Strike: "provide"
Insert: "be the"
Strike: "command"
Insert: "commander"

-END-

DS

Committee Vote:
Yes 16, No 0.

401251SC.Hdh

20

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 2-13-95 BILL NO. HB 461 NUMBER _____

MOTION: Wenneman Do Pass Amendment

Unanimous -

NAME	AYE	NO
Rep. Duane Grimes, Chairman		
Rep. John Bohlinger, Vice Chairman, Majority		
Rep. Carolyn Squires, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Ellen Bergman		
Rep. Bill Carey		
Rep. Dick Green		
Rep. Toni Hagener		
Rep. Deb Kottel		
Rep. Bonnie Martinez		
Rep. Brad Molnar		
Rep. Bruce Simon		
Rep. Liz Smith		
Rep. Susan Smith		
Rep. Loren Soft		
Rep. Ken Wennemar		

EXHIBIT 14
DATE 2/13/95
HB 461

HOUSE BILL 461

"AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL ACT"

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 15
DATE 2/13/95
HB 461

HOUSE BILL 461 "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIALS INCIDENT ACT"

Executive Summary

- Legislation proposed by the State Emergency Response Commission which is comprised of state and local government agencies, local emergency responders, and private industry representatives.
- Legislation that promotes a public and private partnership to mitigate the potential expense and harm caused by hazardous material.
- Legislation that coordinates federal regulation and local capabilities without new or additional costs to citizens, industry, or local governments.
- A plan that coordinates local government and private industry helping other local governments and industry.
- A plan that fills an obvious missing piece of hazardous material incident management - the short term emergency response that stabilizes the incident.
- Legislation that allows the state and its citizens to respond to local requests for help without incurring liability.
- A plan that identifies and coordinates existing resources and citizen talent.
- Legislation and a plan that do not dictate government intervention but provide a greater level of support and government responsiveness.
- A plan consistent with the economic environment and infrastructure needed to attract new business to Montana.
- Legislation and a plan that do not place financial burden on the deep pockets of existing Montana industry.
- Legislation and a plan that is policed by both public and private sector representatives for the good of all.
- Legislation that encourages innovation and departure from old limits and from old antagonisms.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging DATE 2-13-95

BILL NO. HB 461 SPONSOR(S) Ryan

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Stan Sternberg	MT. Dept. of TRANS		
Kurt Bosch	MDT		
Bruce Suenram	DOJ State Fire Marshal	—	
Bob Gilbert	MT. STATE Volunteer Firefighters Assn	X	
JAMES D. LOFFTUS	MT FIRE DIST ASSN	✓	
Pat Keim	Burlington Northern RR	✓	
Bob Robinson	DHES	✓	
Kathy McGowan	MSPOA	✓	
Richard Grady	Fire Chief Canyon Creek Fire District	X	
Bill Reed	Fire Chief Missoula Rural FD	X	
Dave Herzberg	" " "	X	
Dan Hebberg	MT Disaster + Emerg. Service	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 8, 1995, at 4:15

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Jeff Weldon

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 215, HB 461, HB 489.
Executive Action: HB 215, HB 461, HB 489, HB 274

HEARING ON HB 489

Opening Statement by Sponsor:

REP. ED GRADY, HD #55, CANYON CREEK, told the committee HB 489 would allow the sale or exchange of certain state lands (the Helena fairgrounds, some property near Lewistown and some near Boulder) to other public entities (counties). The bill originally called for transfer to nonprofit corporations, but that stipulation was removed in the House. The exchanges would be for community service or other public purposes.

large that could happen immediately. As he understood it, in the past there have been occasions where the EA had been delayed for several months and then a problem did result. Thirty days should be workable.

Mr North commented that all timber sales are taken to the Land Board on a monthly basis. He said on the average there was about a two-week delay getting to the Land Board for a decision.

Mr. Clinch mentioned that the amendment stated that after permission was granted there would be 30 days before DSL could proceed. He asked if it were the intent that MEPA compliance had to be obtained before the timber sale could be processed.

Mr. Everts said the amendment was intended to target a certain date, and the amendment ties the date back to the time access permission was granted.

SEN. WILLIAM CRISMORE asked if the same regulations would be required on very small sales. **CHAIR. GROSFIELD** said the bill only applied to specific access situations.

Mr. Everts said through the planning process at DSL those situations were categorically excluded from MEPA. Salvage sales might or might not be excluded.

Mr. Clinch said that issue was being discussed in the department's programmatic EIS. The small sale program was somewhat different and was similar to the Forest Service's "Green Slip" sale permit. It would not be affected by the bill.

Motion: SENATOR GROSFIELD MOVED AMENDMENT NO. 27402.ate TO HB 274.

Vote: A ROLL CALL VOTE FOLLOWED, WITH FIVE VOTING AYE AND FIVE VOTING NAY AND THE MOTION FAILED.

Motion/Vote: SENATOR CRISMORE MOVED TO CONCUR IN HB 274 AS WRITTEN. MOTION WAS CONCURRED IN WITH SENATOR WELDON VOTING NO.

HEARING ON HB 461

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM RYAN, HD #44, GREAT FALLS, told the committee his bill would create the Montana Emergency Response to Hazardous Material Incidents Act **(EXHIBIT #2).** It was developed over a two-year period by the State Emergency Response Committee appointed by the Governor. The purpose of the bill was to allow all entities involved in response to a disaster to work together.

Proponents' Testimony:

Clark Johnson, State Emergency Response Commission, said his organization operates under a federal grant and does some training regarding hazardous materials to local governmental entities across the state. They helped in the planning of HB 461. The proposal would support local jurisdictions in their response to hazardous materials incidents.
Under HB 461, existing resources throughout the state would be used to help each other in emergency situations without creating any new FTE's. The issue of liability was addressed in the bill, and would apply only to entities identified in the bill.

He said "threatened release" and "possible release" were defined in the bill. If responders were asked to stand by in an emergency situation to deal with a release that did not occur, under much federal legislation, they may not be entitled to reimbursement. Industry was concerned that someone might call and cause a large response to something that was not dangerous. The plan would establish a system to verify that there was a need for an emergency response from the state. All terms in the bill were consistent with existing federal definitions from the EPA.

Jim Green, Administrator, Disaster & Emergency Services, Department of Military Affairs (DOMA), supported the bill because it would provide a way for the state to assist local governments when a hazardous material incident goes beyond their capabilities.

Hazardous materials incidents occur almost daily in Montana, and over 99% of those incidents are handled successfully by local responders, primarily fire departments.

Bob Robinson, Director, DHES, said he did not think the bill would be controversial. He told the committee that Governor Stephens created the Emergency Response to Hazardous Material Incidents group in response to the train wreck in Whitefish where spilled fuels threatened Whitefish Lake. It rapidly became apparent that there was a need to better manage rural incidents of that type. Whitefish did not have the resources to respond and it took some time for assistance to be organized.

Governor Racicot reauthorized the committee and charged it with developing a method of responding to hazardous materials incidents. The committee decided against creating another bureaucracy to deal with those emergencies and in favor of coordinating existing entities already supplied with emergency response equipment (Burlington Northern, Montana Power, and Malmstrom Air Force Base, for example). The bill will not usurp any responsibilities of local responders.

Jim Kembel, City of Billings, strongly supported the legislation.

Bruce Suenram, State Fire Marshall, Department of Justice, also supported HB 461. He said his office was the inspecting agency for many facilities that store and utilize hazardous materials, and stated that there were numerous potential problems.

Jim Smith, Montana Sheriffs & Peace Officers' Association, also supported the bill as it would provide state support to local jurisdictions while recognizing local authority.

Bob Gilbert, Montana State Volunteer Fire Fighters, appeared in support of the bill. He said his people were not always trained to handle hazardous materials and were usually the first to appear following an emergency situation.

Jim Lofftus, Montana Fire District Association, requested that the committee support the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CHRIS CHRISTIAENS commented that it appeared the DOMA had financed planning for the bill, but asked where funding would be found in the future.

Jim Green said the bill would put the Governor's Emergency Response Commission into DOMA, Disaster and Emergency Services Division. If funding were found to be necessary, the proposals would go through that department's budget.

Closing by Sponsor:

REP. RYAN said there were 9,000 emergency responders in the state and the bill would tie them all together to work as one unit. He thought it was a really good piece of legislation and hoped the committee would agree.

EXECUTIVE ACTION ON HB 461

Motion: **SENATOR CHRISTIAENS MOVED HB 461 BE CONCURRED IN.**

Discussion: **CHAIR. GROSFIELD** commented that Section 17 of the bill indicated that the bill would require a two-thirds vote of the Senate for passage.

Vote: **ALL SEVEN COMMITTEE MEMBERS PRESENT VOTED AYE AND THE MOTION TO CONCUR IN HB 461 CARRIED.**

(This meeting was recorded on both sides of one tape, 60 minutes each side.)

ADJOURNMENT

Adjournment: 4:15

Lorents Grosfield

LORENTS GROSFIELD, CHAIRMAN

Theda Rossberg

THEDA ROSSBERG, SECRETARY

by Shirley Herrin

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-8-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	X		
B.F. "CHRIS" CHRISTIAENS	X		
MACK COLE	X		
WILLIAM CRISMORE	X		
MIKE FOSTER	X		
TOM KEATING	X		
KEN MILLER	X		
JEFF WELDON			X
BILL WILSON	X		
LARRY TVEIT, VICE CHAIRMAN	X		
LORENTS GROSFIELD, CHAIRMAN	X		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

March 9, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 461 (third reading copy -- blue), respectfully report that HB 461 be concurred in.

Signed: Lorents Grosfield
Senator Lorents Grosfield, Chair

Amd. Coord.
Sec. of Senate

SEN. BILL WILSON
Senator Carrying Bill

551100SC.SRF

DATE 3-8-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB 215, HB-461, HB-489

< ■ > **PLEASE PRINT** < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Bob Goodman	L & C County Fairground Users	489	✓	
Wayne Rosman	L & C Fairgrounds Users Inc.	489	✓	
CLARK V. JOHNSON	STATE EMERGENCY RESPONSE COMMISSION	461	✓	
Roger Thorvilson	MT DNRS, WHD	HB215		
W James Kembel	City of Billings	HB461	✓	
Anne Hedges	MEIC	HB215	✓	
Jim Greene	DES	461	✓	
Bob Gilbert	MT. STATE Volunteer Firefighters	461	✓	
JAMES A LOFFTUS	MT FIRE DIST ASSN	461	✓	
Wade Sikorski	Southeastern Montana Alliance	215	✓	
Bill Allen	MT Audubon	215	✓	
J.V. Bennett	MontPIRG	215	✓	
CANDACE TORGERSON	MSGA Mont Cattlewomen Assn	489	✓	
Bruce Switzer	MT Dept of Justice	461	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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EXHIBIT NO. 2 - 3/8//95
THE ORIGINAL OF THIS DOCUMENT
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225 N.ROBERTS, HELENA MT 59620-1201
PHONE NO.444-2694

HOUSE BILL NO. 461

INTRODUCED BY RYAN, HARPER, BURNETT, PECK, ORR, SCHWINDEN, KEENAN, SWANSON, MERCER, M. HANSON, BROWN, JACOBSON, DEVLIN, GRINDE, FOSTER, STANG, HERTEL, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Response to Hazardous Material Incidents Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 14] to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other state agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when a emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released

from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(9) "Local emergency response authority" means the person or persons designated by the city, county, or commission to be responsible for the management of an incident at the local level.

(10) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(11) "Plan" means the Montana incident management and hazardous material response support plan.

(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(13) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in [section 4] and may include members of the commission and local and state government responders.

(14) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

NEW SECTION. **Section 4. State emergency response commission.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission must consist of 20 members appointed by the governor. The commission must include representatives of the national guard, air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from the department of health and environmental sciences, the division, the department of transportation, the department of administration, the department of justice, the department of fish, wildlife, and parks, and the office of the governor, and any other representatives that the governor appoints. The members shall serve without compensation. The governor shall appoint a presiding officer from the appointees.

(2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training,

research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in [sections 1 through 14].

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with [sections 1 through 14]. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under [sections 1 through 14].

NEW SECTION. **Section 5. Commission budget and expenditures.** (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

NEW SECTION. **Section 6. Local emergency response authorities -- designation.** (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of [sections 1 through 14].

NEW SECTION. **Section 7. Local emergency response authorities -- powers and duties.** (1) Every local emergency response authority designated pursuant to [sections 1 through 14] shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management ~~structure~~ SYSTEM and specifically define the agency that will ~~provide~~ BE THE incident ~~command~~ COMMANDER.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

NEW SECTION. **Section 8. Controlling provisions for state of emergency -- liability of responsible persons.** In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

NEW SECTION. **Section 9. Notification of release.** (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of health and environmental sciences of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed $10,000 for each day the violation continues to a maximum of $100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

NEW SECTION. **Section 10. Right to reimbursement.** (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in [sections 1 through 14] and only if adequate funds are available.

NEW SECTION. **Section 11. Deficiency warrants for reimbursement of response costs.** (1) (a)

The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to [sections 1 through 14].

(b) The costs of routine firefighting procedures are not reimbursable costs under [sections 1 through 14].

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

NEW SECTION. **Section 12. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in [sections 1 through 14] is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission and the state hazardous material incident response team, [sections 1 through 14] do not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance

in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to [sections 1 through 14].

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

NEW SECTION. **Section 13. Liability of persons and response team members rendering assistance.** The commission and the state hazardous material incident response team are not liable under [sections 1 through 14] for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the state hazardous material incident response team when the person is contacted for response regardless of the person's location.

NEW SECTION. **Section 14. Required assistance in hazardous material incident.** An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

Section 15. Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental

contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, ~~no~~ allocation will not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; ~~and~~

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

~~(d)~~(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made

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since the preceding report."

NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 14].

NEW SECTION. **Section 17. Two-thirds vote required.** Because [section 14] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

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